

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STRIDER ROGNIRHAR,)	8:08CV51
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
TERRY S. SOUTHERN, and)	
TIMOTHY ELARIO,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Notice of Appeal. (Filing No. [54](#).) In his Notice of Appeal, Plaintiff seeks to appeal the court's December 4, 2009 Memorandum and Order. (Filing No. [53](#).) However, that Memorandum and Order is not a final order, and judgment has not been entered in this case.¹ Plaintiff's Notice of Appeal is therefore construed as a Motion for Interlocutory Appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such "controlling question of law" is implicated. The court's December 4, 2009, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion. Therefore,

¹ Although the court has granted summary judgment in favor of Plaintiff on the basis of liability, it cannot grant summary judgment for damages because the factual predicate for any amount of damages is lacking. (Filing No. [53](#) at CM/ECF p. 2.) Further, Plaintiff is proceeding pro se, and because he is in prison, the court cannot schedule a trial on damages. (*Id.*) Accordingly, the court has stayed this matter until Plaintiff advises the court that he has been released from prison and is able to try the damages question. (*Id.*)

there is no reason why the present appeal should proceed prior to the entry of a final judgment. For these reasons, Plaintiff's Notice of Appeal, construed as a Motion for Interlocutory Appeal, is denied.

IT IS THEREFORE ORDERED that: Plaintiff's Notice of Appeal (filing no. [54](#)), construed as a Motion for Interlocutory Appeal, is denied.

January 14, 2010.

BY THE COURT:

Richard G. Kopf
United States District Judge

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